

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXXX's.

May 1, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: September 17, 2002
Case Number: VSO-0576

This Decision addresses the eligibility of XXXXX (the Individual) for access authorization. The regulations governing the Individual's eligibility are found at 10 C.F.R. Part 710. As explained below, the Individual has not resolved the DOE's security concerns. I therefore find that his access authorization should not be restored.

BACKGROUND

The Individual is an employee at a facility operated by the Department of Energy (DOE), and has held access authorization for a number of years.

Between 1981 and 2001, the Individual was arrested five times for driving under the influence of alcohol (DUI). After his fourth arrest, in 1992, he was evaluated by a DOE consultant psychiatrist, who diagnosed the Individual with alcohol dependence. The Individual's access authorization was suspended and he entered an employee assistance program. In 1995, the Individual's access authorization was reinstated.

In 2001, the Individual incurred his fifth DUI. He was evaluated again by a DOE consultant psychiatrist, who diagnosed him for a second time with alcohol dependence. The consultant psychiatrist recommended three years of sobriety for the Individual to demonstrate a level of rehabilitation that is adequate to resolve the security concern raised by his alcohol dependence. The consulting psychiatrist further recommended

that, during these three years, the Individual attend meetings of Alcoholics Anonymous, with a sponsor, twice weekly for a minimum of two years and remain abstinent from alcohol for a year thereafter. He also recommended that the Individual, if he chose not to participate in Alcoholic Anonymous, maintain abstinence for five years in order to resolve the security concern.

On the basis of the Individual's history of alcohol-related problems, and the psychiatric report submitted by the consulting psychiatrist, the DOE suspended the Individual's access authorization, pursuant to 10 C.F.R. § 710.8(j). 1/ The Individual then requested a hearing to have his access authorization restored.

HEARING TESTIMONY

At the hearing, the Individual presented the testimony of a clinical psychologist, four substance abuse counselors, a member of his Alcoholics Anonymous group, his supervisor, and his wife. He also testified in his own behalf. The DOE presented the testimony of the consulting psychiatrist who examined the Individual, and a personnel security specialist. 2/

All the experts who testified at the hearing concur that the Individual suffers from alcohol dependence, and the Individual does not dispute this diagnosis. The sole question for hearing was whether he has undergone sufficient rehabilitation or reformation to resolve the security concerns raised by alcohol dependence.

1/ 10 C.F.R. § 710.8(j) states that derogatory information regarding access authorization includes information that an individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse."

2/ The same psychiatrist examined the Individual in 1992 and 2002, each time making a diagnosis of alcohol dependence.

The Individual's Testimony

At the hearing, the Individual said that he did not dispute the diagnosis of alcohol dependence. He contended, however, that he is adequately reformed and the consulting psychiatrist's requirements for rehabilitation and reformation were excessive. In his opinion, "proof of rehabilitation or reformation ... should be more of what's within an individual ... than a comparison to general studies.... I think what's inside an individual -- the sincerity, the willingness, the wanting to change -- is the most important part..." 3/

As evidence of his internal changes, the Individual stated that he last drank alcohol in October 2001, and has no intention of drinking again. 4/ He also said that he has been regularly attending meetings of Alcoholics Anonymous (AA) since November 2001. 5/

The Individual further claimed that he has undergone more profound personal changes than he did when he tried to stop drinking ten years ago. He testified that "ten years ago, I went through a long period of sobriety. At that time, I didn't make ... personal changes within myself. My sobriety back then was a commitment to DOE, it wasn't a commitment of myself.... I didn't have the counseling or receive the tools I needed [for] relapse prevention." 6/

The Individual's Character Witnesses

The Individual's wife corroborated the Individual's assertion that he has not had a drink since October 2001. 7/ She said that the Individual now participates in his usual recreational

3/ Transcript of Hearing (Tr.), at 10.

4/ Tr., at 229-30.

5/ Tr., at 233.

6/ Tr., at 11.

7/ Tr., at 42.

activities, but without consuming alcohol. 8/ She also said that the Individual shares more about his rehabilitation program than he did ten years ago, and that he has admitted to her that he is an alcoholic. 9/

A member of the Individual's AA group testified that the Individual has been an involved and active participant in AA meetings 10/ The Individual's supervisor testified that the Individual is an exemplary employee.

The Expert Testimony

After his most recent arrest and conviction for DUI, the Individual voluntarily entered a court-sponsored alcohol therapy program. Both the director of the program and the Individual's counselor testified at the hearing. The director cited studies showing that ninety percent of the participants who complete the program do not have another alcohol-related arrest in the five years following completion. He said that the Individual completed the program requirements in nine months, the minimum possible time. The Individual's counselor from the program testified that he initially evaluated the Individual as alcohol dependent. He said that the Individual made excellent progress through the program.

The Individual also entered the facility's Employee Assistance Program. The coordinator of the program testified that she monitored the Individual's progress in the program. 11/ As an initial step, she referred the Individual to a physician, who diagnosed him as alcohol dependent. 12/ Subsequently, the Individual underwent two counseling programs. 13/ Her current assessment of the Individual is that he is doing very well. She says she is pleased that he is involved with AA, and she

8/ Tr., at 46.

9/ Tr., at 94-95,97.

10/ Tr., at 213-19.

11/ Tr., at 73-74.

12/ Tr., at 72-73.

13/ Tr., at 74.

testified that she senses that he has gained insight into his alcohol problem. She stated her opinion that if the Individual continues with his current program, he will do very well. 14/ The Individual's counselor from the employee assistance program testified that he saw Individual for 24 group counseling sessions over twelve weeks, concluding the sessions nine months before the hearing. 15/ He concurred with the diagnosis of alcohol dependence. 16/

Testimony was also provided by two mental health professionals who had examined, but not treated the Individual - a clinical psychologist, and the DOE consulting psychiatrist.

DOE Psychiatrist testified that he diagnosed the Individual with alcohol dependence, as defined in the DSM-IV. He noted that in evaluating 700-800 persons for alcohol disorders over twelve years, he found that the Individual had one of the most severe cases of alcohol dependence he had seen. 17/ He stated that he found the Individual had not shown adequate evidence of rehabilitation or reformation, despite the Individual's abstinence from alcohol since October 2001. 18/ The consulting psychiatrist said that, in order to resolve security concerns, the Individual should meet the requirements stated in his initial report - abstinence from alcohol for three years, with attendance at AA meetings at least once a week for two years, or five years of abstinence if the Individual chose to not attend AA meetings. 19/

The consulting psychiatrist stated that he based his recommendations on statistical studies of persons recovering from substance disorders. At the hearing, he estimated the Individual's chance of relapsing as 50 percent in the next five years; after two years of sobriety, it would be 25 percent, and

14/ Tr., at 75.

15/ Tr., at 59-60.

16/ Tr., at 60.

17/ Tr., at 209.

18/ Tr., at 103.

19/ Tr., at 111-13.

after three years, 10 percent. 20/. He explained that "at this point, with ... a little bit more than a year [of sobriety], I don't think there is a low risk of him relapsing for the next five years.... My standard [for a low risk of relapse] would be ten percent or less." 21/

The clinical psychologist testified that he had examined the Individual twice, but was not treating him. In contrast to the consulting psychiatrist, the clinical psychologist's initial assessment was that the Individual had achieved satisfactory rehabilitation and reformation. The clinical psychologist stated "my conclusion is that, given ... [the Individual's] substantial history of dependence and relapse and then significant periods of sobriety ... his 12-plus months now of sobriety, and ... the treatment protocols ... in which he has been involved ... his probability of relapsing ... into substance abuse is fairly low and is not going to change substantially in the next several years." 22/ He explained that he had based his opinion on his review of long-term alcohol treatment outcome studies. 23/

In finding that the Individual was reformed and rehabilitated, the clinical psychologist testified that he took into account the fact that the Individual had relapsed after a previous period of extended sobriety, noting that with "repeated exposures to treatment ... the probability of relapse seems to decline." 24/ He referred to studies of treatments of various substance disorders, which found that "most people make between two and seven serious attempts to quit before they finally are able to do so and maintain sobriety out ten years." 25/ The clinical psychologist added that he had the impression that the

20/ Tr., at 117. Both the consulting psychiatrist and the clinical defined relapse as any resumption of drinking. Tr., at 189.

21/ Tr., at 114.

22/ Tr., at 179.

23/ Tr., at 180.

24/ Tr., at 182.

25/ Tr., at 182-3.

Individual "has made that ... internal shift from thinking ... that he could control [his drinking] to realizing that this is something that he's not going to be able to control ever." 26/

In response to the clinical psychologist's assertions that the Individual was adequately rehabilitated and reformed, the consulting psychiatrist stated that "given the stake, which is national security, I tend to be ... prudent and conservative." 27/ He said that he felt it was especially necessary to be conservative in light of the Individual's severe alcohol dependence, including five DUI's while holding access authorization.

The clinical psychologist concurred with the need for caution, stating "I can certainly see two years [as a required period for abstinence] ... he has been severely alcohol dependent, no doubt about it. I could certainly see how making sure that he documented an additional 12 months of sobriety would be a reasonable decision." 28/ He explained that "I have national security interests in mind as well as my professional opinion.... That's why I took the additional position that an additional year, as evidence of rehabilitation and continued sobriety, would certainly be reasonable from my perspective." 29/

ANALYSIS

A DOE administrative review proceeding under Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In a Part 710 case, the standard is designed to protect national security interests. Once the DOE has made a showing of derogatory information, the burden is on the individual to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be

26/ Tr., at 186.

27/ Tr., at 201.

28/ Tr., at 197.

29/ Tr., at 210.

clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the interests of national security" standard for the granting of security clearances indicates that determinations should err, if they must, on the side of denials); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

In the present case, the Individual accepts the diagnosis of alcohol dependence. He claims, nevertheless, that he has attained a level of rehabilitation and reformation that is sufficient to resolve security concerns. However, I do not find sufficient evidence to support his claim. I have taken into consideration the testimony of the director of the court sponsored program, indicating that 90 percent of the participants who complete the program do not have another alcohol related arrest in the five years following completion. This testimony, while favorable to the Individual, does not establish rehabilitation or reformation. The director's testimony involves only alcohol-related arrests, while the personnel security concerns reach to a broad range of improper uses of alcohol. In addition, the director's testimony concerns all the participants in the court-sponsored program, while the Individual suffers from a severe case of alcohol dependence. I believe, therefore, that the director's testimony does not resolve security concerns concerning the Individual's alcohol disorder.

I have also considered the testimony of the EAP director, who stated that the Individual is doing very well. However, her positive prognosis was conditioned on the Individual continuing with his present program. I find therefore that her testimony does not support the conclusion that the Individual, at the time of the hearing, had attained rehabilitation and reformation sufficient to resolve security concerns. Accordingly, despite evidence that the Individual has undergone profound personal changes, I believe the expert opinion supports the conclusion that the Individual needs an additional period of abstinence to resolve security concerns.

Ultimately, I find the testimony of the consulting psychiatrist and clinical psychologist to be convincing. At the time of the

hearing, the Individual has completed just over a year of abstinence. However, the DOE's consulting psychiatrist testified that three years of abstinence was required to ensure a low risk of relapse, and the Individual's clinical psychiatrist testified that two years of abstinence would be reasonable. Taking into consideration the severity of the Individual's alcohol dependence, and the expert opinion given at the hearing, I find that the Individual remains at risk of relapse and therefore has not resolved the security concern raised by his alcohol dependence.

CONCLUSION

I find that the Individual suffers from alcohol dependence and has not provided adequate evidence of rehabilitation or reformation to convince me that he has overcome his problem to a degree sufficient to resolve security concerns. Consequently, I believe that the Individual has not shown that restoring his access authorization would not endanger the common defense and security, and would be clearly consistent with the national interest. I therefore find that the Individual's access authorization should not be restored.

Warren M. Gray
Hearing Officer
Office of Hearings and Appeals

Date: May 1, 2003